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PCT/FR2003/002635

## PATENT COOPERATION TREATY



## PCT

527,751

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference PHM/EC-43123	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/FR2003/002635	International filing date (day/month/year) 03 septembre 2003 (03.09.2003)	Priority date (day/month/year) 10 septembre 2002 (10.09.2002)
International Patent Classification (IPC) or national classification and IPC A61B 17/70		
Applicant TAYLOR, Jean		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 5 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of \_\_\_\_\_ sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 01 avril 2004 (01.04.2004)	Date of completion of this report 27 May 2004 (27.05.2004)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/FR2003/002635

## I. Basis of the report

### 1. With regard to the elements of the international application:\*

- ☐ the international application as originally filed
- ☒ the description:  
 pages \_\_\_\_\_ 1-6 \_\_\_\_\_, as originally filed  
 pages \_\_\_\_\_, filed with the demand  
 pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☒ the claims:  
 pages \_\_\_\_\_ 1-13 \_\_\_\_\_, as originally filed  
 pages \_\_\_\_\_, as amended (together with any statement under Article 19  
 pages \_\_\_\_\_, filed with the demand  
 pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☒ the drawings:  
 pages \_\_\_\_\_ 1/1 \_\_\_\_\_, as originally filed  
 pages \_\_\_\_\_, filed with the demand  
 pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☐ the sequence listing part of the description:  
 pages \_\_\_\_\_, as originally filed  
 pages \_\_\_\_\_, filed with the demand  
 pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

### 2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

### 3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

### 4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, Nos. \_\_\_\_\_
- ☐ the drawings, sheets/fig \_\_\_\_\_

### 5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\*

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

## V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

## 1. Statement

Novelty (N)	Claims	1-13	YES
	Claims		NO
Inventive step (IS)	Claims	1-13	YES
	Claims		NO
Industrial applicability (IA)	Claims	1-13	YES
	Claims		NO

## 2. Citations and explanations

## 1. Reference is made to the following documents:

D1: FR-A-2 818 530 (SPINE NEXT) 28 June 2002 (2002-06-28)

D2: FR-A-2 722 088 (CAHLIK MARC ANDRE) 12 January 1996 (1996-01-12)

2. **Claim 1**

D1, which is considered to be the prior art closest to the subject matter of claim 1, describes (the references between parentheses apply to said document) a posterior vertebral support assembly (figure 1), including an interspinous process spacer (10) shaped for being inserted between the spinal apophyses (A1, A2) of two vertebrae (V1, V2) to be treated, of which at least the area intended to be placed between the spinal apophyses of the vertebrae is made of an elastically deformable material (abstract).

The subject matter of claim 1 differs from this known assembly in that it includes:

- two lateral compression members, intended to be placed longitudinally on either side of the spacer; said lateral compression members are

deformable between release positions, which they adopt when the vertebrae are in a state of lordosis or when the spinal column is extended and in which they are comparatively transversely distant from the spacer, and compression positions, which they adopt when the spinal column undergoes bending and in which they are comparatively transversely close to the spacer; and

- two lateral transmission members located between the lateral compression members and the spacer, shaped so that, when the lateral compression members are moved to said compression position, they engage the spacer transversely in the area thereof intended to be located between the spinal apophyses of the vertebrae.

The subject matter of claim 1 is therefore novel (PCT Article 33(2)).

- 2.1 The problem that the present invention is intended to solve can therefore be considered to be that of improving the deformation behaviour of the intervertebral spacer when the spinal column is subjected to bending.
- 2.2 The solution to this problem, as proposed in claim 1 of the present application, is considered to involve an inventive step (PCT Article 33(3)) for the following reasons:

Most of the intervertebral spacers described in the documents cited in the international search report are fastened by means of a tie that does not fully encircle the corresponding spacer. Such a tie cannot

therefore be used as a lateral compression member. D2 describes a vertebral support assembly having a tie that fully encircles the assembly. The assembly described in said document is relatively different, since it requires two spacers for fastening two vertebrae. Furthermore, the material of the spacer is not specified and there are no lateral transmission members.

3. **Claims 2 to 13**

Claims 2 to 13 are dependent on claim 1 and thus also comply, as such, with the PCT requirements of novelty and inventive step.